

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.20330 of 2019**

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Nand Kishore Singh @ Nand Kishore Ojha, S/o Late Harichand Singh @ Harichandar Ojha, At- Bali Vishanpura P.O.- Balsoue, P.S.- Mashrak, District-Saran.

... .. Petitioner/s

Versus

1. The State of Bihar, through its Principal Secretary, Excise Department, Govt. of Bihar, Old Secretariat, Patna.
2. The District Magistrate, Saran.
3. The Superintendent of Police, Saran.
4. The S.H.O. Mashrak Police Station, Saran.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Ravi Prakash, Adv.  
For the Respondent/s : Mr.Kumar Manish (SC5)

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**

**and**

**HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)**

**Date : 20-12-2019**

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

The petitioner prays for provisional release of the Hero Honda Splendor Plus Motorcycle bearing Registration No. BR04H5569, which has been seized in connection with Mashrak P.S. Case No. 305 of 2019 for the offences punishable under Sections 272, 273 of the I.P.C. and Sections 30/30 (a)/38/41 of the Bihar Prohibition and Excise Act, 2016.

It is stated by learned counsel for the petitioner that confiscation proceeding is pending and the vehicle is lying under the open sky in the police station. The seizure list reflects the seizure of 5 liters of country made liquor.



Having heard learned counsel for the parties and taking note of the nature of seizure made as well as the fact that the confiscation proceeding is pending, we direct that the vehicle in question be released provisionally in favour of the petitioner on production of ownership and registration with respect to vehicle in question in his name before the District Magistrate, Saran with two sureties proportionate to the value of the vehicle, looking to the age of the vehicle, as indicated in the insurance document. The petitioner while submitting the surety shall also furnish the following affidavits / undertakings:

- (i) That the vehicle in question has never been involved in any offence of similar nature in past and shall not indulge in similar offence in future.
- (ii) That the petitioner shall not indulge in creating any third party right or interest in respect of the vehicle during the pendency of the confiscation proceeding, if any, and shall not alienate the vehicle during this period as well as he will not change the feature of the vehicle in any manner.
- (iii) The petitioner shall furnish an undertaking to produce the vehicle before the confiscating authority as and when required.
- (iv) Prior to release of the vehicle, a Panchanama would be got prepared by the District Magistrate, Saran, wherein the photograph of the vehicle shall be taken and will be certified by the petitioner and the same shall be kept on record so that in future, if so required, it may be used as a secondary evidence.



The petitioner shall furnish an undertaking not to challenge the said Panchanama in course of trial or proceeding.

The release of the vehicle shall be allowed within a period of 14 days from the date of submission of the sureties and the undertakings as stated above. This release of the vehicle would, however, be subject to initiation and finalization of the confiscation proceeding.

As the petitioner has been made accused in the present case, the vehicle shall be released subject to production of bail order.

With the observations /directions, this writ petition is allowed.

**(Shivaji Pandey, J)**

**( Anjani Kumar Sharan, J)**

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